

EXHIBIT 6

226 Fed.Appx. 887

This case was not selected for
publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally
governing citation of judicial decisions issued on or after
Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2.
United States Court of Appeals, Eleventh Circuit.

Sandra H. FAUST, Plaintiff–Appellant,
Max Pope, Trustee in Bankruptcy, Plaintiff,
v.

PEMCO AEROPLEX, INC., Defendant–Appellee,
Aerospace Workers of America
(UAW), et al., Defendants.

No. 06–12313

|
Non–Argument Calendar

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March 15, 2007.

Synopsis

Background: Employee appealed from order of the
United States District Court for the Northern District of
Alabama granting summary judgment to employer in her
discrimination lawsuit filed pursuant to Americans with
Disabilities Act (ADA).

The Court of Appeals held that employee was not an
individual with a “disability” within the meaning of the
ADA, as although she had a physical impairment, there was
no evidence her restrictions substantially limited major life
activities she identified, including working.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary
Judgment.

Attorneys and Law Firms

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Birmingham, AL, for Plaintiff–Appellant.

Sally Broatch Waudby, Lehr Middlebrooks Price & Vreeland,
P.C., Birmingham, AL, for Defendant–Appellee.

Appeal from the United States District Court for the Northern
District of Alabama. D.C. Docket No. 00–00938–CV–HS–S.

Before DUBINA, CARNES and MARCUS, Circuit Judges.

Opinion

PER CURIAM:

Sandra Faust appeals from the district court's order granting
summary judgment to Pemco Aeroplex, Inc. (“Pemco”) in
her employment discrimination lawsuit, filed pursuant to
the Americans with Disabilities Act (“ADA”), 42 U.S.C.
§ 12101, *et seq.* In her lawsuit, Faust alleged that Pemco
illegally denied her a union-classified position because of her
disability in violation of the ADA. On appeal, Faust argues
that there existed material issues of genuine fact precluding
summary judgment, including whether she has a physical
impairment that substantially limits her in the major life
activities of working, caring for herself, performing manual
tasks, lifting, and reaching. We affirm.

We review a district court order granting summary judgment
de novo, view all of the facts in the record in the light most
favorable to the non-moving party, and draw all inferences
in her favor. *Frederick v. Sprint/United Mgmt. Co.*, 246 F.3d
1305, 1311 (11th Cir.2001). “Summary judgment is only
proper if there are no genuine issues of material fact, and
the moving party is entitled to judgment as a matter of law.”
Id. We give credence to evidence favoring the non-movant
as well as “uncontradicted and unimpeached” evidence from
disinterested witnesses that supports the moving party. *889
Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133,
151, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). In the context
of summary judgment, we must look at the record as a whole,
reviewing all of the evidence in the record. *Id.* at 150, 120
S.Ct. 2097.

The ADA provides that no covered employer “shall
discriminate against a qualified individual with a disability
because of the disability of such individual” in any of
the “terms, conditions, [or] privileges of employment.” 42
U.S.C. § 12112(a). This provision covers terminations. *Id.* To
establish a *prima facie* case of employment discrimination
under the ADA, a plaintiff must show: (1) she has a
disability; (2) she is a qualified individual with or without
reasonable accommodation; and (3) she was discriminated
against because of her disability. *Rossbach v. City of Miami*,
371 F.3d 1354, 1356–1357 (11th Cir.2004).

The ADA defines the first element of the *prima facie* case—a disability—as follows: “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(2). A court generally determines the existence of a disability, under the first definition, by making a three-point assessment of whether: (1) a plaintiff’s injury is a physical impairment; (2) the activities that the plaintiff claims are limited by his injury qualify as major life activities; and (3) the injury substantially limits the major life activities he identifies. See *Bragdon v. Abbott*, 524 U.S. 624, 631, 118 S.Ct. 2196, 141 L.Ed.2d 540 (1998).

Applying the *Bragdon* three-point assessment, the district court concluded that although Faust has a physical impairment, within the meaning of the applicable Equal Employment Opportunity Commission regulations, 29 C.F.R. § 1630.2(h)(1), there was *no* evidence that Faust’s restrictions substantially limited the “major life activities” identified by Faust, including working. Indeed, the district court noted that

Faust was not limited in the major life activity of working, as evidenced by her ability, in the past, to continue working with the very disability upon which she relies in the instant suit. After she was injured in 1991, she continued working until 1996 when she went on strike. She subsequently could have performed a job in her employer’s planning department, but chose not to because it would result in a loss of union pay and benefits.¹ In a thorough and well-reasoned opinion, the district court considered and rejected every argument Faust raises in the instant appeal. In short, Faust was not an “individual with a disability,” within the meaning of the ADA. Accordingly, the district court did not err by entering summary judgment on this basis.²

AFFIRMED.

All Citations

226 Fed.Appx. 887, 34 NDLR P 139

Footnotes

- 1 The district court noted that Pemco allowed Faust to work for five years after her injury and even offered her the job in the planning department, thus indicating that Pemco did not perceive her as disabled for purposes of the ADA.
- 2 Based on Faust’s failure to satisfy her burden, at the summary judgment stage, on the first factor of her *prima facie* case, we need not, and do not, consider her arguments on the other factors.